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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/533,412

04/29/2005

Brent Daniel Rogers

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EXAMINER

PESELEV, ELLI

ART UNIT

PAPER NUMBER

1623

MAIL DATE

DELIVERY MODE

02/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/533,412	Applicant(s) ROGERS ET AL.	
	Examiner Elli Peselev	Art Unit 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/16/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone (U.S. Patent No. 6,432,929).

Stone discloses a beverage comprising glucosamine (column 13, Table 5).

Stone further discloses a method for making said beverage wherein the cartilage supplement is added to drink base and the combination is heated to "preferably but not necessarily, at temperatures below those used in heat pasteurization process" (column 8, lines 15-31). Further, note that Stone discloses "Pasteurization parameters in the range of about 165 F to about 200 F (column 8, lines 60-65) and the amount of glucosamine in the beverage of about 1.5% by weight (column 12). Since the

Art Unit: 1623

reference's teaching is not limited to the preferred embodiments, the claimed beverage and a method of making the same are prima facie obvious over Stone.

Applicant's arguments filed December 10, 2008 have been fully considered but they are not persuasive.

Applicants contends that Stone does not teach or suggest preparing a drink comprising glucosamine and subsequently heat pasteurizing the drink. This argument has not been found persuasive. Stone discloses "the cartilage supplement may be added to the mix tank with the juice base and other ingredients, and the product may be pasteurized" (column 9, lines 2-5). Note that the teaching by a reference is not limited to its preferred embodiments.

Applicant further contends that there is no disclosure in Stone regarding a quantity of GLCN remaining after heat pasteurizing a beverage containing GLNC. This argument has not been found persuasive because the applicant has failed to point out the difference in amounts of GLNC between the reference's method and the claimed method.

Claims 10 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone (U.S. Patent No. 6,432,929) in view of Yang et al (Chemical Agricultural Society, (1998), 36(6), 554-564) and applicant's admittance on page 10 of the specification.

Stone discloses a beverage comprising glucosamine and a method of making said beverage as discussed above, but does not disclose glucosamine derived from a fungal biomass and containing levulinic acid or melanoidins. However, note that

Art Unit: 1623

glucosamine derived from a fungal biomass was known in the art at the time the claimed invention was made as disclosed by Yang et al and applicant admits on page 10 of the specification that melanoidins and levulinic acid are bi-products of conversion of fungal biomass to glucosamine. Therefore, it would have been prima facie obvious to a person having ordinary skill in the art at the time the claimed invention was made to prepare a beverage disclosed by Stone by substituting glucosamine prepared from fungal biomass for glucosamine prepared from animal source in order to prepare a vegetarian product.

Applicant's arguments filed December 10, 2008 have been fully considered but they are not persuasive.

Applicant contends that Yang et al do not teach or suggest preparing a glucosamine-containing beverage and subsequently pasteurizing it. This argument has not been found persuasive since said step is disclosed by Stone as discussed above.

Applicant further contends that there is no indication that glucosamine prepared by Yang's method would be suitable for consumption in a beverage. This argument has not been found persuasive since it would have been prima facie obvious to a person having ordinary skill in the art to use purified glucosamine made from fungal biomass in a beverage suitable for consumption.

With respect to applicant's arguments with respect to melanoidins and levulinic acid note that on page 10 of the specification it is stated that melanoidins and levulinic acid are likely produced during Maillard Reaction. Note that Maillard reaction occurs upon pasteurization of fruit juices (see, U.S. Patent No. 3,801,717, column 1).

Art Unit: 1623

Therefore, a person having ordinary skill in the art at the time the claimed invention was made would have expected the formation of melanoidins and levulinic acid during pasteurization process disclosed by Stone and encompassed by the present claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elli Peselev whose telephone number is (571) 272-0659. The examiner can normally be reached on 8.00-4.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Jiang can be reached on (571) 272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1623

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Elli Peselev
/Elli Peselev/
Primary Examiner, Art Unit 1623